(3) No. 93-1704

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

STEVE J. ABRAHAM, Personal Representative of the Estate of Roseline Abraham, et al.,

Petitioners,

v.

PWG PARTNERSHIP, et al,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Mexico

PETITIONER'S REPLY BRIEF TO BRIEF OF RESPONDENTS IN OPPOSITION

Thomas R. Hartnett, III*
Will Ford Hartnett
4900 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 742-4655
Counsel for Petitioners
*Counsel of Record

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REASONS FOR GRANTING THE WRIT

Contrary to the assertions of Respondents, this is not a preemption case. This is a case that involves the exclusive

power of Congress to control the occupancy and use of property owned by the United States, and the infringement by New Mexico courts upon that exclusive power.

State laws granting title by adverse possession, prescription, or presumed grant can never apply to oil and gas leases issued by the United States, because such legal remedies are based on possession by an intruder, which necessarily conflicts with the exclusive control of possession by the United States.

"Because of the importance of the contention that the state court's decision had invaded the domain of the Federal Communications Commission we granted certiorari . . ." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 123 (1945). Also see, Howlett v. Rose, 496 U.S. 356 (1990),

Testa v. Katt, 330 U.S. 386 (1947), and Martinez v. California, 444 U.S. 277 (1980).

Because the doctrine of presumed grant is predicated on a finding of exclusive possession by an intruder, the courts of New Mexico necessarily usurped the exclusive power of Congress by ruling that a party never authorized by the federal government had exclusive possession and acquired rights thereby.

No court, federal or state, has any power to interfere with the exclusive power of Congress. California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572 (1987); Kleppe v. New Mexico, 426 U.S. 529, 540 (1976); Boesche v. Udall, 373 U.S. 472, 477-78 (1963). This is analogous to the exclusive right of Indians to occupancy and use, granted to them by the United States, which can only be interfered with, or

terminated by, the United States. Oneida Indian Nation v. Oneida County, 414 U.S. 661 (1974) (right of possession not terminable except by act of the United States)

The United States owns millions of acres of oil and gas, mostly in remote, isolated areas. American Indians own thousands more which the U.S. administers and protects. A state's doctrine of presumed grant, prescription, or adverse possession threatens the exclusive federal power to control the occupancy and use of federal lands. Respondents' sidebar that certiorari should not be granted because this is "a complex and probably unique state-law property case," allegedly never to arise again, is naive. The New Mexico decision is an invitation to squatters on federal lands all over the country.

Respondents Misstate Petitioners' Second Reason

Respondents misconstrue a contention of Petitioners: "At most, what Petitioners are saying is that federal law preempts one particular aspect of state property law." (p.6)

Petitioners contend that state laws governing adverse possession, prescription, and presumed grant can never be applied to federal oil and gas leases because such doctrines are grounded in exclusive possession[1]. Exclusive possession by an unauthorized party impermissibly interferes with, and threatens, the exclusive control of the United States.

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[1] And would threaten the exclusive power of the United States to control the occupancy and use of property of the United States.

This is not a case of competing transferees for ownership of rights under oil and gas leases (as asserted by Respondents). Those claims are clearly decided by state law. Wallis v. Pan American Petroleum Corp. 384 U.S. 63 (1963). One can illustrate Petitioners' argument by juxtaposing their case with the issue involved in O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977). In that case, Mr. Walker became the record owner of an oil and gas lease. He assigned the lease to X. Later, he also assigned the lease to Y. The issue was notice, and bona fide purchaser. The case was decided according to New Mexico law (as required by Wallis).

The case at bar does not involve competing assignments.[2] The court below

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[2] Respondents seem to imply that Mike and Roseline Abraham assigned 10 leases. The reason the courts below

found a presumed grant of undocumented alleged transfers based on exclusive possession by an unauthorized party of minerals owned by the United States, (1) the occupancy and use of which are under the exclusive control of the United States, (2) exclusive possession of which was granted by

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contrived the doctrine of presumed grant was to pick up 4 leases that were never assigned. (App. A-15)*

*(Also (in footnote 3 pp 2-3 ** and ***), Respondents misstate the record and the law: the stipulated maturity date was represented to, and accepted by the court, in the contested accounting phase trial, with no strings attached (Tr. 2659-60 and 2667).

**Respondents are less than candid in advancing the Kansas Maguire case because it is directly contrary to (1) Lantis v. Cook, 69 N.W.2d 849 (Mich. 1955), and (2) the Restatement, Contracts 2D § 301. The New Mexico Supreme Court denied such contention of Respondents when it denied their motions to dismiss the appeal (on that ground.)

*** Roseline Abraham appeared at the trial in July, 1991.

the United States to the lessee (subject to being supplanted if unitized), and (3) exclusive possession of which was placed in a unit operator upon unitization.

Denial of Due Process

Roseline Abraham was denied due process by the New Mexico courts. First, the state courts ignored her contractual rights. She had a right to rely on her contract which required her to do nothing until El Paso Natural Gas Company (a) billed her for above ground separators if liquid hydrocarbons were extracted, (b) notified her if oil was encountered, and (c) notified her when her option to repurchase matured. None of that happened. Yet, the New Mexico courts found acquiescence.

Second, the state courts ignored federal law. She had a right to rely on federal law which grants exclusive

possession to federal oil and gas lesses, and unit operators, yet the New Mexico courts found exclusive possession in a trespasser.

Third, the state courts ignored New Mexico statutory law. As a resident of New Mexico, she had a right to rely on New Mexico statutes that provide that a conveyance of her community real property without her signature is null and void.[3] Yet the New Mexico courts ignored the fact that she did not sign any "presumed grant."

Fourth, the state courts ignored New Mexico and federal procedural law. Due process was denied by the trial judge's contriving "presumed grant" without

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[3] In Padilla v. Roller, 608 P.2d 1116 (1980), cited by Respondents, the Supreme Court of New Mexico unequivocally ruled a conveyance without the wife's signature is null and void under New Mexico law.

pleadings. Furthermore, Roseline Abraham was repeatedly denied a jury trial, even though issues of possession, and acquiescence, are jury issues. Fletcher v. Fuller, 120 U.S. 534 (1887). In addition, if presumed grant had been plead Roseline Abraham would have removed the case to federal court where she would have received a fair trial.

The denial of due process to Roseline Abraham deprived her of an enormously valuable option which was a critical part of the consideration for her entering into the contract in 1952. As the dissent forcefully and correctly observed, the New Mexico courts awarded the extremely valuable option to a party who neither "contracted or bargained for" it (Petition App. A-56-57), nor paid anything for it.

CONCLUSION

A writ of certiorari should be granted.

Respectfully submitted,

Thomas R. Hartnett, III*
Will Ford Hartnett
4900 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 742-4655

COUNSEL FOR PETITIONERS
*Counsel of Record

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